This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Mr. Whipple's report and Mr. Otis's letter. 1839

US
5263
197

HARVARD
COLLEGE
LIBRARY

MR. WHIPPLE'S REPORT,

AND

MR. OTIS'S LETTER.

BOSTON:
PRINTED BY CASSADY AND MARCH,
Mechanics' Hall.....No. 8 Wilson's Lane.
1839.

WS 5263.197

RHODE ISLAND LEGISLATURE.

January Session....1839.

In General Assembly, Jan. 23.

The Committee to whom were referred the resolutions of Mr. *Wells*, of Hopkinton, touching certain resolutions passed by the House of Representatives of the United States, on the 12th of December, A. D. 1838, relative to petitions for the abolition of slavery, &c. &c., and also sundry petitions from citizens of this State relating to the right of petition,

REPORT AS FOLLOWS:

Whereas, the House of Representatives of the Congress of the United States, on the 11th and 12th days of December, 1838, passed the following Resolutions, viz:

"*Resolved*, That this Government is of limited power, and that by the Constitution of the United States, Congress has no jurisdiction whatever over the institution of Slavery in the several States of the Confederacy.

"*Resolved*, That petitions for the abolition of slavery in the District of Columbia and the territories of the United States, and against the removal of slaves from one State to another, are a part of a plan of operations set on foot to affect the institution of slavery in the several States, and thus indirectly to destroy that institution within their several limits.

"*Resolved*, That Congress has no right to do that indirectly which it cannot do directly, and that the agitation of the subject of slavery in the District of Columbia, or in the territories, as a means or with a view of disturbing or overthrowing that institution in the several States, is against the true spirit and meaning of the Constitution, an infringement of the rights of the States affected, and a breach of the public faith on which they entered into the Confederacy.

"*Resolved*, That the Constitution rests on the broad principles of equality among the members of this Confederacy, and that Congress, in the exercise of its acknowledged powers, has no right to discriminate between the institutions of one portion of the States and another, with a view of abolishing the one or promoting the other.

"*Resolved, therefore*, that all attempts on the part of Congress to abolish slavery in the District of Columbia, or the Territories, or to prohibit the removal of slaves from State to State, or to discriminate between the consti-

tutions of one portion of the Confederacy and another, with the view aforesaid, are in violation of the constitutional principles on which the Union of these States rests, and beyond the jurisdiction of Congress; and that every petition, memorial, resolution, proposition or paper, touching or relating, in any way or to any extent whatever, to slavery as aforesaid, or the abolition thereof, shall, on the presentation thereof, without any further action thereon, be laid on the table, without being printed, debated or referred."

And, whereas, in the judgment of this General Assembly, that part of the resolution, which declares that "every petition, memorial, resolution, proposition or paper, touching or relating, in any way or to any extent whatever, to slavery as aforesaid, or to the abolition thereof, shall, on the presentation thereof, without any further action thereon, be laid on the table, without being printed, debated, or referred," is unsound in principle, a dangerous invasion of the right of the people to petition Congress, and in violation of the true intent and meaning of the Constitution of the United States.

Therefore, resolved, That the General Assembly do hereby, in the name of the people of this State, protest against said resolutions, and declare that in their opinion, they ought to be rescinded.

Resolved, That his Excellency the Governor be requested to cause a copy of these resolutions, to be transmitted to the members of the United States House of Representatives from this State, to be by them laid before that body.

All which is respectfully submitted by

JAMES F. SIMMONS,
For the Committee.

REPORT OF THE MINORITY OF THE SAME COMMITTEE.

The undersigned, one of the Committee to whom the foregoing resolutions were referred, begs leave to report, that as he differs in opinion from the other members of the Committee, he has felt it to be his duty to himself and to his constituents to give to the subject all the attention which his other engagements would permit.

By the resolutions submitted by Mr. Wells, from Hopkinton, the resolutions of the national House of Representatives of the 12th December 1838, are characterized "as a dangerous invasion of the right of the people to petition Congress, and in violation of the Constitution of the United States."

The national House of Representatives is composed of many distinguished statesmen and jurists, who are no strangers to the language and spirit of the constitution. Their personal and

individual interests are identified with the interests of the mass of the people, and their fidelity to rights of so plain and popular a character as the right of petition is guarantied by the conciousness, that the slightest invasion of such rights seldom remains long unpunished. It is not to be presumed therefore that a violation of a privilege inherited from our ancestors, and in relation to which the people have always manifested a sensitive and jealous feeling, could have been premeditated or intended, especially as the object of those resolutions could have been accomplished in various other modes. Nor is there the slightest reason to consider these resolutions the fruit of a slight and hasty consideration. They are evidently the result of an understanding of some sort or other between the administration members from the North and the great body of the members from the South, and whatever the supposed rashness of the latter might dictate, the wariness of the former has seldom been off its guard upon the subject of popular rights.

The imputation of haste and inadvertence is still more strongly repelled by the well known fact, that the subject of the right of petition has been agitated and discussed in Congress, in the legislatures of many of the States, and in the public papers, for many years. The extreme jealousy and sensitiveness of the people on this exciting topic, could not have been overlooked, nor have failed in dictating a path beyond the reach of all constitutional objections, in the opinion of the members from the free States who voted in favor of the resolutions in question. The cautious language in which the resolutions are couched, fully shows that the meaning of every word was fully weighed, and totally forbids the idea of negligence or haste. The inference from these facts necessarily is, that in the opinion of the supporters of these resolutions, they acted within the scope of their constitutional powers, and that if they have exceeded them, it must have been from ignorance, and not from design or negligence.

Before we condemn them, then, as unconstitutional, we ought to be sure that we have considered the subject as maturely as those who supported them. We ought also to take along with us the wise and temperate rule of the Supreme Court of the United States, in passing upon the Acts of this and every other legislative body, never to decide against them except in cases in which their unconstitutionality is established beyond all reasonable doubt. The necessity of the application of this rule is much stronger in the present case, than in cases before the Court, because the Court is *obliged* by law to pass upon such

subjects. It is the performance of an imperative duty devolved upon it by the constitution from which it cannot escape. Its errors therefore, like the errors of all who by law are obliged to act, are morally and legally excusable by the necesssity which dictates the action. A parent who commits a mistake in the correction of his child, is excusable before all human tribunals. But a mere volunteer who inflicts correction upon his neighbors' children, or takes part in their quarrels, stands justified by nothing but the positive certainty that his interference is legal and just.

Of this latter character is the interference of this House with the proceedings of the National Representatives. We are *volunteers*. Neither the constitution or the laws of the State under which we act, nor the constitution nor laws of the U. States, in which, as individuals, we are deeply interested, impose this task upon us as a duty. We have not even the instructions of a majority of our constituents; on the contrary, in the opinion of the undersigned, such action would be contrary to the feelings and wishes of a vast majority of the people of Rhode Island. No combination of circumstances could possible exist so loudly calling for silence and inaction. It is, in reality, a dispute between the abolitionists of the North and the slave holders of the South. Both these parties have become excited not only to rash and imprudent language, but to rash and exceedingly imprudent action. In the progress of this, as in the progress of all other disputes, each party avails itself of the mismanagement of the controversy by its antagonist, with a view to gain additional support. The efforts of the abolitionists have been unwearied and untiring to create an excitement upon the right of petition, and, under cover of this subsisting dispute, to enlist the wise and discreet yeomanry of Rhode Island under the abolition banner, knowing full well that a hostility to the South, upon the subject of the popular right to petition, will soon extend to hostility upon all other subjects. These abolitionists are before us and among us. They are organized throughout the Northern States into compact and disciplined societies, with immense sums of money at their command, and they force their papers and lecturing and salaried preachers into every town and into numerous families; and it is principally from them that we are presented with arguments upon this great and exciting question of constitutional law, while the framers and supporters of the resolutions, capable, it is presumed, of shedding quite as much light on the subject, are not before us, nor are they called upon to aid us with their views and reasons. It is, therefore, in the

opinion of the undersigned, substantially an *ex parte* proceeding; a proceeding too, under undue and improper excitement, and upon a subject in which we are merely volunteers.

With these preliminary remarks, the undersigned will proceed to give his reasons for declining all action upon the subject.

By the 1st Article of the amendment of the Constitution, it is declared, "That Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or the press, or the right of the people peaceably to assemble and petition government for a redress of grievances."

By the 5th Section of the 1st Article of the Constitution, it is provided, "That each House may determine the rules of its proceedings."

At the settlement of this country, and for a period long anterior, the people of England possessed the constitutional right to petition Parliament for the redress of all grievances, whether of an individual or of a public nature. The right had at times been limited as to the number of signers, it having been found, in turbulent times, that large bodies of the people assembled under the pretence of petitioning Parliament, but in reality for other and dangerous purposes. By a statute passed in the reign of Charles II, it was therefore enacted, that no petition should be signed by more than twenty. This statute, however, was repealed or went into disuse long before the adoption of the American constitution. And it was a settled right in the people of both countries to assemble in any numbers and petition for a redress of grievances. The constitution does not grant, but recognizes the right, and prohibits its violation by any law passed by Congress. It nowhere defines the right, but such as it was, transmitted from our English ancestors, so should it remain inviolate.

In order effectually to secure it from invasion, the constitution provides that Congress shall pass *no law* abridging it. It does not say that it shall not be affected by a *resolution* of either House. Its prohibition is against any law of Congress: and it is well known that there is a wide difference between a law of Congress and a resolution of either House. It is hardly necessary to state that a law of Congress requires the assent of both Houses, and the assent of the President also. And that when it has become a law, it operates upon the whole people of the United States. A resolution of either House operates only within the walls of the House. A law of Congress is permanent, and remains in force until repealed by the power that

enacted it. A resolution of the House expires with the existing or present session of the House.

As the constitution clearly intended that this favorite and popular right of petitioning (as important in the view of the framers of that instrument as the liberty of speech or the press) should not be violated by Congress, or any other power in the country, why, it may be asked, did it not provide that Congress should pass no law, nor that either House should pass any resolution abridging the freedom of speech, of the press, or of the right to petition? Was this omission by mistake, or was it by design?

It will be remembered that the provision securing these invaluable rights was not inserted in the original constitution itself, but is contained in the amendments. It should also be observed that by the original constitution express power was given to each house "to determine the rules of its proceedings." This power is granted in the broadest and amplest terms. The extent of it is beyond the reach of doubt. It is a power to determine the rules of *all* its proceedings. It is also equally beyond a doubt that any vote of the House upon a petition is a part of its proceedings. The moment the petition is read or its contents made known, the moment any action of the House upon the petition is asked, that action is a proceeding of the House, to be regulated solely and exclusively by the House. Its proceedings upon such petition are entered upon the journals of the House, as are all its other proceedings.

Previous, then, to the amendments to the constitution, each House possessed the undoubted power to pass any resolution in relation to its own proceedings upon any petition or other business before it. It possessed the undoubted power to pass resolutions similar to those of the 12th Dec. 1838. No man who values his reputation for sagacity and common fairness will question this power, under the original constitution. No man will question that the persons, who penned the amendments, knew the full and broad extent of this power of the House, and no men felt a deeper solicitude to guard and completely protect the popular powers of the press, the freedom of speech, and the right to petition. Why did not the amendments repeal so much of the power of each House to determine the rules of its proceedings as was inconsistent with the freedom of speech, of the press, or the right to petition? Why merely protect these rights from invasion by a law of Congress, and leave them at the mercy of either House?

By the original constitution, the House possessed the un-

doubted power to pass a resolution in the very words of the resolution of December, 1838: "That every petition, memorial, resolution, proposition or paper, touching or relating in any way, or to any extent whatever, to slavery, as aforesaid, or the abolition thereof, shall, on the presentation thereof, without any further action thereon, be laid on the table, without being debated, printed or referred." This power, too, was granted to the House in *express* terms. It was, therefore, a well known power. The Convention of the States, which proposed these amendments, was jealous of the powers conferred by the original constitution, and the object of the amendments was to guard against their abuse. The members of that Convention were among the ablest of the times, and intimately acquainted with the constitution, and with the established usages of legislative bodies; and the simple reason for protecting the right of petition from a law of Congress, and not protecting it from the power of the House to regulate its own proceedings, was, that the right itself, as it had existed for ages, as it had been practised upon in England and in this country, was a right which could be invaded by a law of Congress, because a law of Congress would operate upon individuals, and individual action, out of doors, by making it penal to write or sign a petition. They well knew that no resolution of either House, in relation to its own proceedings, could, by any possibility, operate upon the right to petition.

It must be observed that the right to petition has never been defined by any statute or written law in England, or in this country. Its value and importance have never been called in question; still the extent of the right, at the time of adopting the constitution, and even down to the present period, has never been defined, except by legislative usage. When the framers of the Amendments to the Constitution recognized "the right to petition," they necessarily intended the right that had been practised upon in the English and American legislatures. Practice, being the basis, is also the *limit* and *extent* of the right. In England and in all the legislative bodies in this country, this right to petition had been constantly exercised, and at the same time the power of each House to determine the rules of its proceedings has also been exercised, in many cases to a much greater extent, and for less cogent reasons than exist in the case under consideration.

What then is the right to petition, as established by the practice of five hundred years, and limited and defined by that practice? It is a right to do certain individual acts, not in conjunction

with the house or tribunal appealed to, but wholly independent of that tribunal. It is a constitutional, and consequently a *legal* right, like the right to sue in a court of justice. They are alike remedial rights, and equally sacred in the eye of the constitution.

The undersigned lays great stress upon this definition of the right to petition, that like the right to sue, it is a right in the individual to do certain individual acts, unaided and uncontrolled by the tribunal to which his petition is addressed, and that it does not and *cannot* interfere with the power of that tribunal to regulate its rules of proceedings. The power of the House to regulate its own action upon the petition never can interfere with the equally sacred right of the petitioner to regulate his own individual action. If any court should prevent a plaintiff from purchasing and serving a writ, and entering his action in court, the judges would be personally responsible in damages for such an interference. It is a legal right, for the violation of which the individual is entitled to his legal remedy. If this or any other House of Representatives should prevent a petitioner from doing any individual act embraced in "the right to petition," each member so interfering would be personally liable to damages, for that too is a *legal* right, for the violation of which the individual would be entitled to his appropriate *legal* remedy. These individual acts consist in a right in any number of men peaceably to assemble, to deliberate upon their grievances, to draw a petition in their own language and sentiments, and to present the petition and read it, or make its contents known to the House appealed to. All these are acts of the individuals, or such individual agents as they may employ. The House does not participate in these acts. From the first to the last it exercises no control over the individual action of the petitioner. From the first to the last there is no *joint act* of the House and the petitioner. All that the petitioner *can* do, he does *alone*. He is the sole arbiter of his own conduct. On the other hand, all that the House can do, it does by itself. It is the sole arbiter of its own conduct, but its right to act does not commence until the petitioner has performed all the individual acts embraced in "the right to petition." He must put the petition in possession of the House, make it a part of the business of the House, and invoke the action of the House upon it, before the power of the House over it attaches. When that power attaches, all power of the individual ceases, and no exercise of the power of the House *can* interfere with the right to petition, because the *whole* right to petition must be exercised

and enjoyed to its full extent, before the petition becomes a proceeding of the House.

A party can never be interrupted in the exercise of a right, if from its very nature it must be fully exercised before it comes to the possession of the tribunal appealed to.

It must be borne in mind, that the right to petition is a mere right to *ask*, not a right to *demand*, and every right to ask necessarily implies a *duty* in the House to *hear;* but a right to ask and be heard necessarily implies a right to *refuse*, and to refuse in any mode or form the House may dictate. Both the power to ask and the power to refuse may be abused, but an abuse of a power is a *political*, not a *legal* injury. It is an abuse, and a fraudulent abuse, of the power to petition, to obtain the names of hundreds of children under ten years of age, and to let them pass as persons whose opinions are entitled to weight. The undersigned has been informed that this has been done by the managers of the abolition petitions now before this House. It is an *abuse* of the power, but still the petitioners *possess* the power. It is a political evil, not a legal injury. So the House may abuse its just and necessary powers; but that, too, is a political evil, and the remedy is by the ballot box, and not by an action at law. Will any lawyer contend that if my constitutional right to petition is violated, I have not a remedy at law against any one who aids in its violation? But will any one contend that these petitioners before Congress possess any *legal* remedy against the House or the members who voted for the resolutions of December 12th? And why will he not? Because it does not violate the right to petition, or to do any individual act embraced in that right. If there is any abuse of the powers of the House in those resolutions, the remedy is a *political* remedy, because the *evil* is *political.*

A law of Congress which controls the action of the individual out of doors would have interfered with the right to petition, and therefore all such laws were prohibited. But a resolution of either House acts not upon the proceedings or acts of the individual, but upon its own proceedings in the House, *after* the individual has enjoyed his right; and therefore the framers of the Amendments to the Constitution saw that a power in the House to determine its own proceedings never could interfere with the power of the individual to determine his proceedings. Until the present excitement, the undersigned believes that no such extended right to petition was ever contended for. It is not only a right to petition, but a right, as now construed, to dictate to the House what disposition

the House should make of the petition. After hearing it, the House must act, and as it must control its own action, it may refuse even to receive the petition, as appears by the following precedents.

On the 9th April, 1694, a petition was tendered to the House, relating to the bill for granting to their Majesties several duties upon the tonnage of ships, and the question being put, that the petition be received, it passed in the negative.

On the 28th of April, 1698, a petition was offered to the House against the bill for laying a duty upon inland pit-coal, and the question being put, that the petition be received, it passed in the negative.

Similar votes also passed on the 29th and 30th June, 1698, upon duties relating to Scotch linens and whale fins imported.

On the 5th of February, 1703, a petition from the maltsters being offered against the bill for continuing the duty on malt, and the question being put, that the petition be brought up, it passed in the negative.

On the 21st December, 1706, Resolved, That this House will receive no petition for any sum of money, relating to public service but what is recommended from the Crown.

On the 11th of June, 1713, this is declared to be a *standing* order of the House.

On the 29th of March, 1707, Resolved that the House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any money owing to the Crown, but in a committee of the whole House, and this is declared to be a standing order.

On the 8th of March, 1732, a petition being offered against a bill depending, for securing the trade of the Sugar Colonies, it was refused to be brought up. A motion was then made that a committee be appointed to search for precedents in relation to the receiving or not receiving petitions against the imposing of duties; and the question being put, it passed in the negative.

It will be remembered that these resolutions passed within a few years after the famous Declaration of Rights, in 1668, in which the right to petition is recognized as the undoubted right of every subject.

Very recently a petition or remonstrance of the citizens of York, Penn. approving the act of the President in removing the deposites, was presented to the Senate of the United States, and having been read, Mr. Clay objected to its reception, and on the question shall it be received, it was determined in the negative. Yeas 20, Nays 24.

"On motion of Mr. Preston, the yeas and nays being desired by one-fifth of the members, those who voted in the affirmative were,

Benton, Brown, Forsyth, Grundy, Hendricks, Hill, Kane, King of Alabama, King of Georgia, Lyon, M'Kean, Mangum, Morris, Robinson, Shepley, Tallmadge, Tipton, White, Wilkins, Wright.—20.

Those who voted in the negative, are

Bibb, Black, Calhoun, Clay, Clayton, Ewing, Frelinghuysen, Kent, Leigh, Moore, Naudain, Poindexter, Porter, Prentiss, Preston, Robbins, Silsbee, Smith, Southard, Sprague, Swift, Tomlinson, Waggaman, Webster.—24."

It was formerly a common practice of *this House*, to hear objections from creditors to even the reception of petitions for the insolvent acts, and their reception was often refused. Neither the English Commons, nor the Senate of the United States, nor this House of Representatives, ever deemed that the right to petition extended necessarily to even the reception of the petition. The petitions were read, and if the House were against any action upon them, they refused to receive them. It may be prudent to examine our own practice, before we condemn the much less doubtful practice of the national House of Representatives.

The undersigned then contends, that there must be a point where the right to petition ends, and the power of the House commences; that the constitution could not intend that the one right should conflict with the other; that, by an express grant, it has conferred the sole power upon the House, the moment the petition becomes a part of the proceedings of the House; that this proceeding is a legislative proceeding, in which no one can participate but members of the House, duly elected by the people, and representing the whole people; that even a resolution of the House or a law of Congress, giving to the petitioner any voice in the proceedings of the House, would be unconstitutional and void, because all the power is delegated to the members, and they possess no power to delegate any portion of it to other individuals; that this power in a petitioner to demand any other action of the House, than hearing his petition, is not embraced in "the right to petition," because that is a right to individual action, and not a right to control legislative action; that the extent of this right, not being defined in the constitution, but wholly by usage, must be ascertained by usage; and that the usage of every legislative body in the civilized world is against the right as now asserted.

The undersigned would remind the House, that he simply asserts the *constitutionality* of the resolutions of December, 1838. With their policy or prudential character, we have nothing to do. It would be highly indecorous in one legislative body to pass a judgment upon the policy or expediency of the action of another. Neither can we say, with any regard to truth or propriety, that these resolutions have a tendency to impair the right to petition. They are either within the constitutional power of the House, or they are not. If they are, no exercise of the constitutional power of the House, can tend to impair the constitutional right of the petitioner. There is a line that separates the one right from the other. If the House has passed that line, it has invaded the right of the petitioner, and its resolution is unconstitutional. If it has not, no exercise of power, within that line, can tend to invade the rights on the other side, any more than the occupation and cultivation of one of two adjoining land owners up to the dividing line, can tend to injure the rights of the other adjoining owner.

The undersigned has endeavored to obtain from those who differ from him, their views of the location or position of this dividing line, but without success. If the right to petition is not complete upon the presentation and reading of the petition, if all power and control of the petitioner over it, is not terminated the moment the action of the House commences, when does it terminate? The resolution of Dec. 1838, declares, that all papers on the table, or which may be presented during the present session, upon the subject of slavery, shall lie upon the table, without any action, debate or reference thereof.

It should be borne in mind, that there is a material difference between petitions relating to private, and petitions relating to public affairs. With the facts of all private petitions, the members are usually unacquainted, and a reference to a committee is the ordinary mode of investigating them. The final action of the House is also upon the petition, by a vote, granting or rejecting it.

The case is entirely different in relation to petitions upon subjects of a public nature. The members are presumed to know all the facts in regard to slavery in the District of Columbia, quite as well as the petitioners. The fact that slavery is there tolerated by law, that slavery is an evil, and that Congress possesses the constitutional power to remove it, need not be established by a committee. The action of the House is different from its action upon private petitions. No vote or direct action is ever had upon the petitions themselves. In

fact, the petitions are little more than suggestions of the petitioners, of reasons for or against a particular law. If those suggestions convince any one or more of the members, a bill is introduced and the whole action of the House is upon the bill. The petitions are never thought of or noticed, after the introduction of a bill. On the contrary, if the members think the reasons of the petitioners of insufficient weight, no bill is introduced, and the petitions breathe their last, upon the table, or in the hands of a committee. This is tantamount to a rejection of the petitions. Our own practice is the same. Disposing of the subject to which the petitions relate, is disposing of every petition, memorial or paper now before us, or which may be presented during the present session. We have before us numerous petitions upon license laws. Is it not constitutional to resolve that we will not act upon that subject at the present session? Would not such a resolution virtually and effectually postpone any petition now, or which may come before us, until the ensuing session? Is it not a virtual rejection of the petitions, at least for the present?

The resolution of the 12th December, 1838, is either a postponement of the whole subject of slavery, or a refusal to legislate upon it. In either view, can the power of the House be doubted? Has it not been repeatedly exercised by this and every other House of Representatives in the country?*

---

* In connexion with this branch of the subject, it may not be amiss to quote the following extract from a speech made by Mr. Whipple in defence of the principles of his Report:

"But it is asked what is the right of petition worth under such a mode of disposing of petitions. What is the right of petition worth in *any* case where the tribunals appealed to differ in opinion with the petitioners?

This popular argument confounds the value of the right with the right itself. The value of the right, from its very nature, depends entirely upon the action of the House; but the right itself is unimpaired and unabridged, though rendered of no value by its want of success.

What is the value of the right to petition this House to repeal our law of partible inheritances, and to restore the ancient rule of primogeniture? Of what value is the right to petition for an extension of the elective franchise? We all possess an undoubted right to petition for an order of nobility. No law of the State nor resolution of this House, in the slightest degree, has abridged this right. But of what value is it? What destroys the value but the same cause which destroys the value of the right to petition Congress for the abolition of slavery? It is the unanimous and adverse opinion here, and the unanimous and adverse opinion there that renders the right of no value. But here, as there, the right itself is not abridged.

The value of most of our rights depends upon the exercise of the rights of others. I possess the undoubted right to ride with my family through any of the public streets of this city. No one can abridge that right. But of what value is it, when a thousand troops, with their martial music and martial flags, render its exercise dangerous to life or limb?

A riparian proprietor possesses the undoubted right to use a stream of

The undersigned, respectfully to those of a different opinion, frankly confesses that his only difficulty in the consideration of this subject has been to ascertain the limit and extent of "the right to petition," as contended for by others. The framers of the articles of amendment were familiar with the usages and practice of the English and American legislatures. They well knew that by universal usage the petitioners possessed no right to be heard as to the *disposal* of petitions. They well knew that no such right had ever been contended for. If they had believed in the existence of a right of this extent, why was the *whole* power of disposal conferred upon the House? Did they mean that the whole power to dictate whether the subject of slavery should be debated or referred to a committee, should be in the petitioners? If not the whole, *what part?* The whole power *must* be in the House, or it must be in the petitioners. There cannot be a partnership power to be exercised by both, for if they differ, the whole business of the House must stop, there being no third power or umpire to decide between them.

The resolutions of the 12th December, as the undersigned understands them, simply amount to this; that as the House had determined not to legislate upon the subject of slavery during the present session, all papers referring to that subject, and all that should hereafter be presented, should be read and received and laid upon the table. They do not deny to any present or future petitioner the right to have his petition read and received, but declare that they do not mean to act on that subject during the present session. The words present session are not mentioned, but every member of the House well knew that the resolution could not bind their successors, but must expire with the existing session. Had there been a simple resolution declaring that the House would not act upon the subject of slavery

---

water for purposes of irrigation. But its value is completely destroyed by the exercise of similar rights by those above him, by which the stream is wholly absorbed. The right of petition is eminently of this dependent character. Its value depends wholly upon the judgment and feelings of the body appealed to. A favorable judgment does not enlarge the right; it only increases its value in a given case. An unfavorable judgment does not abridge the right, but lessens or destroys its value. Success or defeat is the test of value, but what has either to do with the unabridged existence of the right itself? To say, that the Atherton resolutions, passed as they were by a large and adverse majority, impair the value of the right to petition upon that particular subject, is saying nothing, and worse than nothing, for it is an admission that not the right itself but merely its value has been abridged. Every court possesses the constitutional power to destroy the whole value of a plaintiff's action by an adverse decision. But does such decision abridge his constitutional right to sue?"

at this session, would there have existed a doubt of their constitutional right so to do? It is admitted that there would not. And yet the *effect* of such a vote, without any reference to the petitions on the table, or those hereafter presented, would have been precisely the same as the present resolutions. Resolutions postponing a whole subject are passed by this House at almost every session, and all future petitions are postponed as a matter of course. It also silences all further debate, a right quite as important as the right to petition.

No views which the undersigned has been able to take, with the assistance of some of his legal friends, have raised a doubt in his or their minds as to the constitutionality of those resolutions. On the contrary, there are many circumstances known to all of us, which rendered some general action or disposition of the subject indispensably necessary.

These, or other petitions of a similar character, have been before Congress for many years. It is not pretended that any facts exist with which the members are not acquainted. The prayers of these petitions have been denied, session after session; for upon petitions for a public law a neglect to bring in a bill is a denial of the prayer.

The petitioners are dissatisfied with these repeated decisions upon the subject, and are determined not to acquiesce, but to pour in upon the House such a flood of new petitions as will influence by their numbers, where they have failed to convince by their arguments. In courts of justice, parties are not allowed a hearing upon a question of law once solemnly settled by the same court. Is a House of Representatives obliged to debate and refer to committees one or two hundred thousand petitions at every session, upon a subject that they have over and over again decided? They are obliged to read, and do read and receive them, and in the opinion of the undersigned, any further action upon them is not required by the right to petition, nor even by any sound principle of policy, until some member can be found having sufficient confidence in the subject to introduce a bill.

The undersigned cannot blind himself to the fact that this question of the right to petition, proceeds wholly from abolition feeling, and is used as an instrument to attain abolition objects. It is an attempt to add political heat to abolition fury. In the opinion of the undersigned, the sincere, judicious friends of manumission, are those most opposed to abolition societies; for so long as these societies exist, so long will manumission, with the consent of the master, remain a hopeless object. The mild and

persuasive measures of the earliest friends of abolition diffused the light of reason, without arousing the lion passions of the heart. The slave-holder was addressed by the gentle Quaker, not as one having power to dictate and control, but in the true spirit of love and meekness. He was addressed by the manumission in other states, and the increased advance in industry, wealth and refinement, which it produced; by the examples of France and England, and also by a still more effective agent, the power of the whole body of English and American literature which surrounded his mind, as a sort of atmosphere, with its perpetual exhalations of light and truth. That mind was already bending under these mild and genial, but perpetually operating influences. A divided opinion was created in the south. Breaches were made of considerable magnitude in all the defences of slavery, and in all human probability a few years more would have completed what had so happily been commenced by mild and natural agencies. But the stern bigot, and the sour fanatic, pushed aside the gentle and judicious Quaker, and all that had been accomplished by the latter was lost, and worse than lost to the friends of freedom, by the blindness and fury of the former. Numerous societies were formed and large sums of money subscribed. Powerful presses were employed to keep up a constant and galling fire, and numerous and well paid agencies established all over the Northern States, constituting, in the aggregate, an array of force and power, which overspread the whole southern mind with fear and alarm, and, from a weakened and divided state, drove it into one firm, united, compact, and hostile feeling.

Until these moral troops are disbanded, until the morning and evening blast of their hostile trumpet ceases to sound in the Southern ear with its din of dreadful preparation; until this moral war, to call it by its gentlest name, waged by those who truly believe that they are doing their duty to their God to put down slavery even at the expense of the union and quiet of this before peaceful country; until then, not even a hope exists of the emancipation of the slaves of the South with the consent of their masters. Every accession of strength to these societies is binding the chain still stronger upon the unhappy African. Every legislative resolution loosens our bond of Union, and hastens the period of war and bloodshed. Every step, in this infuriate and dangerous course, proves that even in Rhode Island the maniac power of religious bigotry was caged and chained, and not annihilated, as we had fondly believed. Loose it from its long confinement, give it the power

of numbers and wealth, and coax it into action by legislative sympathy, and you fasten upon the North a slavery of mind as dark and benighted, as that which palsied the christian world in the days of the Inquisition and Crusades. Give it scope, and it will wield its fierce and gigantic power with a blindness to all worldly consequences, and an insensibility to all human suffering. For the last thousand years it has imprisoned as many innocent victims, tortured and lacerated as much human flesh, and spilt ten times as much blood, as slavery has done.

For one, the undersigned cannot ally himself to such a spirit, nor to any party, political or moral, that aid in letting it loose upon us. He protests against any action upon the subject of slavery by the Rhode-Island Legislature. He is worldly minded enough still to believe that the Union, our unrivalled constitution, and the peace and repose of this great American family, are worthy of preservation. If they must fall before the spreading power of religious bigotry, if a social and servile war must drench in blood this fairest heritage of man, let it not be hurried on by the legislators of the descendants of Roger Williams. Respectfully submitted by

JOHN WHIPPLE.

LETTER FROM THE HON. HARRISON GRAY OTIS, TO JOHN WHIPPLE, ESQ.

JOHN WHIPPLE, ESQ.

Dear Sir,

I received with much satisfaction your letter with a report to the Legislature of Rhode Island on the Atherton resolutions, and your speech explanatory of your dissent from that report. It is certainly flattering to me to know that I live in your recollection, and that the opinion of one so long withdrawn from the notice of the world, and all participation in public affairs, could create either confidence or distrust in your own; formed with the advantage of intellect in full vigor, and defended by argument to which nothing of substance can be added—your request under these circumstances would have imposed upon me an obligation of courtesy to form the best opinion I might upon a novel subject. But as your report, (though upon a new question which you have disposed of by

an eloquent and conclusive argument,) grows out of an old subject—the condition of slavery among our Southern brethren, and the relationship between their rights and our duties—which has been familiar to my thoughts for half a century; I was quite prepared to examine its merits, and have no other trouble in replying to your favor, but that which is common to age—a loss where to begin and where to leave off.

Had I been a member of Congress, called to decide upon the Atherton resolutions, I should not have voted for them. At the same time I have no doubt of the constitutional power of the House to adopt them. But I considered the original refusal of Congress to hear, commit and obtain a report upon the resolutions regarding slavery in the District of Columbia as unfortunate and impolitic. It was sure to be confounded in popular belief with a denial of the right of petition itself, and thus touch the community in its most irritable nerve. It was also an unusual and apparently an unkind and cavalier mode of cutting short a new inquiry—or an old one requested under new circumstances—entitled to attention on account of the number of petitioners. I had also predicted, three years ago, in a public speech, that the abolition movement would be mingled with political intrigue and party politics. These objections I thought would be in a great measure obviated by the report of the committee, which, being under the control of the majority, would have ended in the same result as laying the petitions on the table, without affording plausible occasion for offence or complaint.

But I am equally free to declare that had I been a member of the Rhode Island Legislature, I should have been found on your side in opposing the report of your committee, inasmuch as the question there assumed an entirely different aspect. It is one thing for Congress to refuse to act upon a petition, and another thing for a State legislature to deny the right of the former to regulate its own proceedings. There is nothing in the Atherton resolutions which negatives the right of petition, and nothing which in fact impairs its value. A petition in the constitutional view is a request offered to a government supposed to have jurisdiction of the subject, for a redress of some grievance. The right to frame, and of consequence to offer such petition, belongs to every peaceable assembly of the people. This right also involves the right to make the government acquainted with the subject matter of the petition—not to have it read *in extenso*, as a matter of course, to which there may be valid objections. Thousands of petitions may relate

to the same single object, or to objects palpably out of the province and competency of the government to decide—or on which the minds of a majority may be known to be made up. They may be flagrantly indecorous, and numerous and voluminous enough to occupy in reading unreasonable time. But if not read, the legislature addressed is bound at least to hearken to a statement of the subject matter—to be informed of the character of the grievances sought to be redressed. Otherwise the right of petition would be nugatory—at least nominal, and unworthy of a place among the fundamentals of a constitution—"the voice" of men "crying in the wilderness."

This right thus explained has, I think, an intrinsic value. It belongs to the whole and every portion of the people—extends to all subjects—is indispensable to an exposition of their sentiments and wants, and in popular and paternal governments, will, when exercised, command attention and obtain relief, unless the first shall, after information and reflection, be thought superfluous, and the last inexpedient or impracticable. The exercise of this right in a particular case, may, as you have ingeniously shown, be of no value. Still the right remains, and has a value in itself—like a perennial fountain, in repairing to which one man's pitcher may be broken and his water spilt, while the source remains inexhaustible.

With this explanation of my views of the right and value of the privilege of petition secured by the constitution, I am prepared to go the whole length of your argument and counter report in the distinctions so elaborately drawn between the right of petition in the people and the right of Congress to regulate their own proceedings, and consequently to dispose of petitions at their will and pleasure. This you have so amply illustrated, that the argument is exhausted, and little more is left me than to say, "ditto to Mr. Burke." I will venture, however, to make one suggestion confirmatory of your views; and that, not to render them more luminous, (which cannot be done,) but merely because it had occurred to me as decisive of the question from my own unaided reflection.

While the abolitionists insist upon the duty of Congress to do something more than merely hear their petitions or a statement of their contents, they furnish no standard for measuring or defining its extent. They do not inform us at what stage of proceedings it may be allowable for Congress to exercise its discretion in rejecting or postponing a petition. It would seem reasonable that the claims of petitioners to the attention of Congress

should not be regarded as of a higher character than those appertaining to their representatives on the floor—that the privilege of the constituent should not exceed that of a member in his place. But it is notorious that the ordinary proceedings of Congress are upon resolutions offered by a member or reported by a committee. Every member is entitled to offer a resolution upon any subject; and it is equally certain that the house possesses and exercises at pleasure, the right of refusing to consider resolutions, and of postponing or rejecting them without debate. The lips of the member are thenceforth sealed upon the subject thus disposed of. Suppose, however, that the same subject is afterwards presented in the form of a petition from persons out of doors—perhaps by the same member, and that the House is constitutionally bound to entertain and act upon it because it is a petition. The action must be upon *resolutions*, and these must of necessity conflict with the previous decision, and supersede the rules that have been applied to resolutions on the same subject. Here, then, the right of the House to regulate its own proceedings is annulled, by the right of petition.

Let this doctrine be established, and there is no vagary or extravagance which an assemblage of petitioners may not concoct into the form of a petition on which Congress must act, or violate the constitution. In the North we may petition for the abolition of slavery in the United States. The South may ask to open the slave trade. One set of persons may propose to amend the constitution by abolishing the Executive, or the Senate, or the Judiciary; another by making the President eligible for life. There are, possibly, some persons in the United States who would prefer a limited monarchy to the existing government. Indeed an endless varietv of projects over which a great majority of the House may be satisfied that Congress has no jurisdiction—or on which their opinions are fixed, or which they deem it impolitic, dangerous or premature to agitate; and which they would instantly suppress if propounded by one of their own members, would be forced upon their deliberations, because, forsooth, the right of petition is sacred. Thus the control of its proceedings would be taken from Congress and transferred to any and to every assemblage of people convened to petition for redress of grievances. In fact the right of initiating laws and of compelling Congress to act upon them would thus be involved in the right of petition, and the business of legislation, as conducted by every organized body of delegates from time immemorial, would become impracticable.

But apart from the merits of this particular question, I freely confess that I regard with deep concern the intervention of our State legislature in any shape regarding the abolition of slavery in the South. It is none of our affair. We can do nothing towards changing or abolishing that condition, but may do, as we have done, very much towards aggravating its evils. If slavery is a stain, it is one with which the Union was born, and which cannot be removed by our effort unless by cutting off the limb which wears it. To judge correctly on this subject we must not only resort to the federal constitution, but go behind it. The members of the first Congress came from the South with a consciousnes of a peculiar interest arising from their slave holding tenure. From the North they went under the impression that all men were "born free," and would become so *de facto*, whenever the colonies should be declared independent. Within my remembrance, in the years '75 and '76, the volunteer minute men paraded the streets with metallic letters, "no slavery," on their caps—which, though not intended peculiarly to bear upon the condition of the African race in the South,—*pointed towards it.* Is was not easy for the men of the North to reconcile these doctrines of universal liberty, with the same doctrine professed by the South, but qualified, practically, by their holding slaves in bondage. There was then no resource but to leave that subject at rest, and to secure the confidence of the South by leaving slavery to state jurisdiction. It was in concession to the jealousies, fears, prejudices and habits of the South, principally emanating from this one cause, that Peyton Randolph was unanimously chosen President of the first Congress, and George Washington Commander of the Army. And it is notorious that this was the source of the "embarrassments" and "delay," in forming the confederation of 1778, and in combining into one general system the various sentiments and interests of a continent divided "into so many sovereignties and independent communities," which are so forcibly set forth in the address to the people of the States by the Congress of the preceding year. Looking into the confederation itself, we find that the parties to it are the "*free inhabitants* of each of these States,"—terms involving the recognition of slavery, and a virtual assent to exclude slaves from the rights of freedom. Passing down to the era of the federal constitution, it is manifest that the institution of slavery is by that instrument *assented to, and agreed to be protected.* The agreement to surrender fugitive slaves, and to tolerate the importation for a term of years would have been a perfidious mock-

ery, if the right were mentally reserved of rendering these clauses inoperate by promoting the liberation of slaves restored or imported. Equally delusive would be the power granted to the general government of "suppressing insurrections,"—if in those most likely to happen, the troops ordered for service should be led by the maxims of their legislative commanders to favor the insurgents.

Thus it is beyond controversy, that whatever questions may arise respecting the conflict of jurisdiction between the federal and the state governments from various constructions of the constitutional instrument; the condition of slavery in the several states is manifestly not a case of the constitution—*non casus fœderis*—but one which the people of the United States, under full advisement of all circumstances have absolutely abjured, and covenanted not to agitate by their representatives in Congress. This is, indeed, so incontrovertible that I do not find it denied in any quarter. But the admission of this plea to federal jurisdiction over slave property irresistibly draws after it the same conclusion against the right of State jurisdiction—and consequently the right of one State to attempt, through the medium of its legislature, by its resolutions or enactments, to operate upon the condition of slavery rather than upon any other domestic institution of another State. Such right, it is self-evident, could have no foundation but in a federal compact. Not being found therein it becomes a nonentity. When, therefore, Rhode Island and Massachusetts adopt measures intended to have a bearing on the domestic institutions of South Carolina and Virginia, they shoot from their spheres, and assume the attitude of independent States making laws *at* other independent States, which can have no legal force; thus exhibiting a spectacle which but for its sinister tendency would merely deserve ridicule as a species of burlesque legislation. I am aware that the fanatical sophisters in justification of these vagaries disavow the expectation and intent of promoting slave emancipation otherwise than by awakening the consciences and enlightening the understanding of the owners. With individuals or associations who sincerely expect to attain the desired consummation by these means, my view of this question has no concern. I am not speaking of the freedom of the press, nor of speech, nor of pen; but of legislative propriety and dignity—of the wisdom and decorum of legislation by one sovereign State, in order to enlighten the bewildered minds of the people of another—to enact moral discourses, homilies on

abstract rights, and abusive commentaries on laws and customs other than their own—to fulminate anathemas against the religious institutions of Canada, or the social institutions of Louisiana, which, in this relation, stand on the same parallel. Neither does this reasoning apply to those who laying their hands on their hearts can say, that their subject in inciting the action of the State legislature is confined to the District of Columbia. Their number, I imagine, is exceedingly small, and while they believe it to be expedient and obligatory on their consciences to pursue this course, nobody is entitled to be judge over them. As to the rest, would to God, the folly of our legislative proceedings were the worst of their effects. But I am profoundly convinced, that if this mania for tampering with the slave tenure of the plantation States, shall generally pervade the legislatures of the North, or, indeed, be permitted to go much further, the days of this Union will shortly be numbered. The people of those States already think they discern in it, the commencement and slow approach of a mine destined to blow their social fabric into air, and they will anticipate the explosion by cutting off the communication. These suggestions, I am aware, are with many, themes of derision and contempt. In a strain of braggart self-complacency that undervalues all prowess but their own, they insist that the South dare not secede—that the measure would place this favorite interest in greater jeopardy, and be destruction to other interests. As a northern man, I have no disposition to break a lance with those who hold to these opinions. I am willing to believe that in the event of a partition of the family estates they could not manage their share of the inheritance without us. But it is lamentably true that they think otherwise, and that great names and splendid intellects among them are enlisted in propagating the opinion that they could not only do as well, but better—certainly much better unless we forbear our persecution—in a separate establishment:—that their's would be the sunshine and our's the shade and the mist. They may be entirely mistaken, but in what government is it found that the passions of a people or of their rulers excited to a certain pitch, do not prevail over their interest? It was not for the interest of your ancestors or mine to brave the dangers of a revolution, that their wives might "sip bohea" without paying a duty. And there are many persons among our southern brethren—probably a great majority—who regard the perpetual assaults made upon their right to their slaves, as menacing dangers to their property, liberty, lives and social comforts, not

less flagrant than those which united them with us in a common cause.

After all, the blindness of those who deny that the South can be forced to a secession from the Union, is less astonishing and dangerous than the infatuation of others, who console themselves with calculations that the loss would not be sensibly felt by the rest of the confederacy. There would, say they, remain enough of population and *materielle*, for all the objects of a grand, prosperous and powerful nation, and sufficient to check, and if necessary give law to neighboring States. The east and west, as of course, would become, ipso facto, a new and homogeneous confederacy, without the trouble of a new arrangement among themselves—a cluster plucked from so exuberant a vine may easily be spared, and the corps d'armèe would be more efficient without a wing composed of troops who are always disposed to discontent and mutiny, and embarrass the operations of every campaign.

Whoever, in reply to these reckless enthusiasts, should assume the duty of showing the consequence that would be found to await the disruption of the Union, would find himself not engaged in a school boy's calculation, to be made in a day with slate and pencil, at Columbia College, in South Carolina; but in compiling a volume, of no small size, referring to the posture of the country prior to the constitution, and analyzing the wonderful changes which have occurred with time in its commercial, agricultural, political and geographical relations. The results of such an investigation would, I fear, prove less flattering to the capability of the non-slaveholding States, (and especially of New England,) erected into a rival government, of persevering in the rapid advance to prosperity hitherto experienced, than some of us fondly imagine; admitting even that the scene of separation would be confined to one act, and that the rest of the Stars would continue "to sing together." But how can any, with the example (and not the fear) of the fate of the Republics on the southern continent of this new world before their eyes, indulge in the dream that we should divide only into two confederacies? Looking upon the map of the American continent, we perceive the garden of the world, extending from Mexico and Cape Horn, converted into a bear garden. Independent states springing up one day, like mushrooms, and withering the next—yet living long enough to inflict some new calamity on their people—commit some new ravage, add some new disappointment to the friends of liberty—one day federal, the next anti-federal; changing governments,

boundaries and names, so that nothing is constant but the spirit of revolution and the cause of agitation, which, with different phases, but always enhancing intensity, broods over contiguous, jealous, and rival democracies—fomenting their feuds, and annihilating their prosperity. With this prospect in full view, with the news of contests, dissensions, carnage and desolation, and of perpetual civil war made the order of the day, in those new-fangled states, we cherish the deceitful imagination that we, an enlightened chosen people, are beyond the reach of such calamities. There is, we think, some charm in our character that will prove, in all events, an antidote to the contagion of bad principles, and the dangers of anarchy. That our people form a variety in the great family of the human species, and have a natural aptitude for making constitutions and federal compacts. But the only claim of our people to good sense pre-eminent over that of other nations must be found, if at all, in their having framed, and for so long a time administered, a government sufficient for all the objects of general liberty and security, under which we are advancing to the highest summit of national prosperity. But the good sense, which having acquired these advantages, is not able to retain them, and suffers the golden fruit to become an apple of discord and fall from her hands, must cease to be a subject of boast or reliance.

The first measure, under the most favorable aspect of separation, that must be inevitable, would be a convention of the people of the free states to remodel the constitution, and adjust it to the new order of things. A partition treaty of some sort for the apportionment of the public domain, and the disposal of its property remaining in the South, and for regulating commerce, would be indispensible, and no power can be found in the constitution authorising any treaty or contract founded on the contingency of a division of the Union. Besides, the disturbance of the balance of power among the states, the location of the seat of government, and innumerable causes springing from the prodigious alteration that has occurred and is in progress in the relationship of the various parts of the Union to each other, would probably occasion a convention to be demanded with acclamation. Supposing this to take place, are we of Rhode Island and Massachusetts quite secure that the first of one of the first subjects of discussion would not be a proposal for a new basis of state representation in the Senate? This it is notorious was the great stumbling block to the framers of the federal constitution, which, for a long time, threatened to be in-

surmountable. And now that "empire states" have grown up within and beyond the old limits, would they be likely to acquiesce in our *aliquot* part of political power in one branch of the legislature? If not, should we be ready to resign it? and if not, again, do we not here discover the germ of an outbreak which would prove "the beginning of the end?" Again,—without attempting to enumerate what no man can number, are we of New-England satisfied that the alternative of uniting and forming a new confederacy with *all* the other states would be left at our option? May not the myriads of the "great valley" imagine, perhaps truly, that their interests will be more closely affiliated with a Southern, than with a Northern confederacy, and that free access to the ocean by their rivers, and a free trade with Southern ports will outweigh all other considerations? In which case they will *set us off* "to live in Sinope." Furthermore, is our prospect of dwelling together in unity, even in New-England, of harmonizing in our views of public measures and policy altogether cheering? And are our resources so prodigious that we are ready and willing to go alone?

In a word, it is manifest that a new convention would be a very different assembly from that of its predecessors. No parallel can be formed between the circumstances of the country which generated the "constitutional assembly," and its present condition. The popular sentiment every where was fixed and united in one conviction—the necessity of a federal government adapted to all the States. Hence a sympathy in the great community resulting from experience of common sufferings, and a good humor, from the consciousness of honesty and sincerity in their aim at a common object. Grave and weighty differences of opinion undoubtedly existed, and were brought into that convention and debated with "hearts of controversy;" but they were the hearts of great statesmen, patriots and jurists, warmed by the zeal which prevails in a congress of ambassadors, but untainted by the infection of the spirit of personal parties, which was as yet unknown.

In such hands we know it was an Herculean labor to *create* a government for the Union, but they were skillful and experienced workmen, and had only to apply old and established principles in framing a new model. To this end, men were elected in reference only to high character for talents and services in the cabinet and the field, with Washington at their head. How different then was the honest strife of opinion and debate among those men, turning principally upon theories and the great fundamentals of public view and real peculiarities of local institutions

and interests, and aiming sincerely at fair and honorable compromise, which they providentially attained, from that to be expected from men sent from a community chafed and embittered by party passions and collisions, nominated by cabals, by the procurement of intrigue, ignorant of the first principles of constitutional or national polity. I cannot doubt that members of this description would be found in a new convention, sufficient to embarrass and defeat any comprehensive scheme of policy, adapted to the exigencies of a great confederacy of States.

The times, my dear sir, are sadly out of joint—the minds of men teem with fancies in respect to government, of which our fathers never dreamed. No maxim in the science of government seems to be settled except that every thing is to be doubted. There is not a clause in the federal constitution which some party, when convenience suits, is not ready to meet with a special plea or demurrer. The State constitutions are like the highways, requiring to be mended every year, and which any man, who can handle a spade or pick-axe, is competent to repair—thus making straight the path for the "march of intellect." The reformers are "abroad," especially in those places where the "schoolmaster" is at home. And, despite of the good sense and illumination of my countrymen, I do not believe the soil of Mexico, or Columbia, or Bolivia, or Chili, or Peru, is more prolific in all the varieties of political turmoil, than would spring up in the hotbed of a new convention of these dis-united States. All this, perhaps, may strike you as the omen of an old man's dream, and may deserve no better estimate. But having in vivid recollection the great events of the revolution, from the landing of General Gage in Boston, to its close—having known in my boyhood, and in *riper age* been honored by an intimate acquaintance with, many of the members of the old Congress (of which my father was one)—having witnessed the scenes which preceded the adoption of the federal constitution, and been familiar with the impediments to that happy issue, which filled all minds with agonizing apprehensions for the fate of the country—it is perhaps natural that I should feel unutterable concern, as I certainly do, in perceiving that the time is coming for the discussion of topics, the mention of which in a serious way would once have been regarded as the superfluous raving of a diseased mind. My personal acquaintance, too, with the men of the South, in public and private life, for more than forty years, has been considerable, and with some of them my intimacy has been strict and

durable. I can perceive no justification for my fellow citizens on this side of the line of Mason and Dixon, to throw firebrands, arrows and death, on the other side of that line. The evil of slavery is not a new discovery, its turpitude was a subject quite as familiar to the people of the North when they sought the alliance of those of the South, as it is at this hour, or at least it was so when they framed the constitution. If other nations have since that time abolished slavery in their own domain, the consequence is that the amount of misery incident to that condition is diminished, and we should be thus reconciled to wait for "coming events," however apparently remote, rather than to do wrong that right may come of it. But the strong and final argument in my mind is that already hinted. Our States and legislatures can do nothing but agitate, provoke and drive to desperation, our southern brethren, defeating their own object by adding new rivets to the black man's chains, which I believe is the effect of every legislative movement. I am yet to learn how emancipation forced upon the planter, admitting the thing to be possible, can be reconciled with the professions of those who announce the whole science of government to consist in promoting the greatest good of the greatest number. But I must remember that while there is no end to this subject, there must be an end to your patience, and am, with great respect and esteem,

Your obedient servant,

H. G. OTIS.

JOHN WHIPPLE, ESQ.

Boston, March 1, 1839.

This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

JAN 27 '55 H

CANCELLED

STALL STUDY

CHARGE

NOV 10 '69 H

CANCELLED

STALL STUDY

CHARGE

US 5263.197
Mr. Whipple's report, and Mr. Otis'
Widener Library 001931755
3 2044 086 273 752